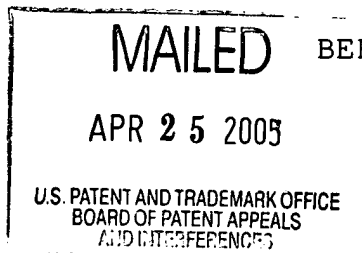


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GIGI C. GORDON

Appeal No. 2005-0886
Application No. 09/805,313

ON BRIEF

Before KIMLIN, OWENS and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-18.

Claim 1 is illustrative:

1. An identification system for identifying and distinguishing individual cleaning articles for cleaning a surface selected from a group consisting essentially of dishes, glassware, cooking pots and pans, kitchen counters, kitchen cabinets, kitchen sinks, dining tables and other surfaces that are used during the food preparation process, toilets, tubs, sinks, floors, walls, cars, boats, windows and tables, each of said cleaning articles selected from the group consisting essentially of sponges, wipes, towels, rags, cloths, blotters and metallic and non-metallic scrubbers, the identification system comprising a plurality of said cleaning articles, each cleaning article intended for and corresponding to a different specific intended cleaning

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application, each of the cleaning articles including an external surface, a cleaning surface disposed on the external surface for a specific intended cleaning application, and identifying indicia constituting a visually distinguishing external feature for specifically identifying the specific intended cleaning application of each of the plurality of cleaning articles, the identifying indicia distinguishing each of the cleaning articles for different intended cleaning applications one from another and specifying the specific intended cleaning application of each of the plurality of cleaning articles.

The examiner relies upon the following references as evidence of obviousness:

Demner	3,496,589	Feb. 24, 1970
Inteso	5,598,488	Jul. 8, 1986
Carter et al. (Carter)	4,702,381	Oct. 27, 1987
Rogers et al. (Rogers)	5,133,707	Jul. 28, 1992
Brach, Jr. et al. (Brach, Jr.)	5,487,203	Jan. 30, 1996
Pirraglia et al. (Pirraglia)	Des. 390,403	Feb. 10, 1998

Scotch-Brite™ Scour Pads, 3M (1995)

Appellant's claimed invention is directed to an identification system for identifying and distinguishing individual cleaning articles, e.g., sponges, towels, rags, etc. The identification system comprises a plurality of cleaning articles which include identifying indicia which visually distinguish the intended use of each of the cleaning articles. For instance, the plurality of cleaning articles may comprise two towels with the identifying indicia on one towel being the word

"dishes" and the identifying indicia on the other towel being the word "toilet." In the words of appellant, "[w]hen the cabinet is opened and a sponge is selected to wash the dishes, it would be very helpful to know that the same sponge was not used yesterday by another family member to clean the toilet" (page 4 of Reply Brief, second paragraph).

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

- (a) claims 1-3, 6-10, 12 and 14-18 over Carter;
- (b) claim 4 over Carter in view of Pirraglia;
- (c) claims 5 and 13 over Carter in view of Inteso;
- (d) claims 5, 11 and 13 over Carter in view of Brach, Jr.;
- (e) claims 1-3, 6-10, 12 and 14-18 over Scotch Brite™;
- (f) claim 4 over Scotch Brite™ in view of Demner;
- (g) claims 5 and 13 over Scotch Brite™ in view of Rogers;

and

(h) claims 5, 11 and 13 over Scotch Brite™ in view of Brach, Jr.

Appellant submits at page 9 of the principal brief that "[a]pplicants submit [sic, applicant submits] that claims 1-18 stand or fall together" (last paragraph). Accordingly, all the appealed claims stand or fall together with claim 1, and we will

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limit our consideration to the examiner's § 103 rejections of claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we concur with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

We consider first the examiner's rejection of claim 1 over Carter. There is no dispute that Carter depicts a towel that contains identifying indicia in the form of either a "HIS" or "HERS" design. We fully concur with the examiner that such a design or label meets the claim requirement for identifying indicia constituting a visually distinguishing external feature for specifically identifying the specific intended cleaning application of the towel. Manifestly, the towel labeled "HIS" is intended to be used by the male of the household for washing. Likewise, a towel labeled "HERS" is intended to be used for cleaning by the female of the household. We also agree with the examiner that the "HIS" towel can be used by the male to clean the claimed cars and boats, whereas the female can use the towel

to clean sinks and the like. However, the towel of Carter need not be used for any of the recited uses to meet the claim requirement for a cleaning article including identifying indicia which constitute a visually distinguishing external feature. This is so because it is well settled that the recitation of an intended use in a claim does not serve to distinguish the claimed structure from a prior art structure. Clearly, in accordance with the wishes of the owners, a towel marked "HIS" can be used for any of the uses recited in claim 1, as can a towel marked "HERS." Surely, it cannot be gainsaid that many towels that are originally meant for personal use are ultimately used for cleaning walls, cars and the like.

Appellant maintains that "the reference [Carter] also does not teach a plurality of cleaning articles" and that "it discloses only one towel and provides no teaching of using the indicia (32) to distinguish one cleaning application from another" (page 11 of principal brief, last paragraph). However, we are confident that one of ordinary skill in the art would have reasonably understood Carter as teaching at least one towel marked "HIS" and one towel marked "HERS." Moreover, we take judicial notice of the fact that many such sets of "HIS" and "HERS" towels have existed in many bathrooms. In our view,

nothing would have been more obvious than Carter suggesting a plurality of cleaning articles.

Turning to the rejection of claim 1 over Scotch Brite™, the reference discloses a scouring pad including identifying indicia on the package which encloses the pad. The package also includes identifying indicia of other products, such as Scotch Brite™ Cookware scrub sponge and Scotch Brite™ No Scratch soap pads, which describe other Scotch Brite™ products. Accordingly, we agree with the examiner that it would have been obvious to one of ordinary skill in the art to provide similar labels on the products described on the enclosing package. While appellant urges that the indicia of Scotch Brite™ is on the thrown away wrapper and not the cleaning sponge, we agree with the examiner that appealed claim 1 is sufficiently broad to embrace identifying indicia that is removed from the cleaning article before its use. Furthermore, we find that it was well known in the art to apply a label to an article which describes the uses for the article. For example, it was known to label a gas can with the lettering "GAS" for identifying the use of the container, namely, to contain gas. In essence, we are satisfied that one of ordinary skill in the art would have found it obvious

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to apply a label to a cleaning article, such as a towel, which describes its intended use.

Appellant makes reference to a Declaration filed March 2, 2004 and "photograph of samples of recently introduced products from 3M showing, *inter alia*, a package having a plurality of cleaning articles, at least one of which cleaning article bears indicia indicating one intended cleaning application and another cleaning article bearing indicia indicating a separate intended cleaning application" (page 17 of principal brief, last paragraph). Appellant then offers the conclusion that "[t]his information relating to the commercial introduction and associated success of the claimed identification system demonstrates the non-obviousness of the claimed invention" (sentence bridging pages 17 and 18 of principal brief). However, it is not clear whether the referenced 3M products are prior art. Also, appellant has not responded to the valid criticism of the examiner set forth at page 14 of the Answer. As set forth by the examiner, "[t]here is no indication in the declaration of when the 3M products were introduced to the marker [sic, market], or when 3M first developed such a product, or even that the 3M products came to market after that of the applicant" (page 14 of

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Answer, second paragraph). We note that appellant's Reply Brief is silent with respect to the examiner's criticism.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

Edward C. Kimlin
EDWARD C. KIMLIN)
Administrative Patent Judge)

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

THOMAS A. WALTZ
Administrative Patent Judge

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